IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.738 of 1999

Between:

1. G.Shankar Reddy, S/o.Gurivi Reddy

2. G.Lakshmi Reddy, S/o.Gurivi Reddy

Both are residents of Chilakalakatta Palle, Hamlet of Agraharam Village, Bukkapatnam Mandal, Anantapur District.

...PETITIONERS

AND

1. The Commissioner of Land Revenue, Government of Andhra Pradesh, Hyderabad.

2. The Joint Collector & Additional District Magistrate, Anantapur, Anantapur District.

3. The Revenue Divisional Officer, Penukonda, Anantapur District.

4. Erra Jennappa, S/o.G.Chandrudu, Chilakalakatta Palle, Hamlet of Agraharam Village, Bukkapatnam Mandal, Anantapur District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records relating to the proceedings of the first respondent dated 30.11.1998 in Spl.CLR's Proceedings No.CDW-I/1342/98 and quash the same by

issuance of a Writ, Direction or Order, particularly one in the nature of Certiorari.

Counsel for the Petitioner: MR.R.V.SUBBA RAO

Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE

Counsel for the Respondent No.4: MR.K.DURGA PRASAD.

The Court made the following:

ORDER:

The land admeasuring about Acs.5.15 in Survey No.613-5 of Agraharam Village in Bukkapatnam Mandal, Anantapur District was originally assigned to one G.Chandrayudu in the year 1956. On the ground that the assignee violated the conditions of patta, the assignment was cancelled by proceedings dated 22.10.1991 and the land was resumed. Subsequently by proceedings dated 30.10.1991, the land admeasuring Acs.2.00 was assigned in favour of the first petitioner and Acs.2.15 was assigned in favour of the second petitioner. They have been cultivating the land.

It appears that the fourth respondent herein, who is none other than the son of G.Chandrayudu filed an appeal before the Revenue Divisional Officer, Penukonda (for short 'the RDO') against the order dated 30.10.1991 assigning the land in favour of the petitioner. By proceedings dated 18.03.1998, the RDO set aside the assignment made in favour of the petitioners. Aggrieved by the same, the petitioners preferred an appeal before the Joint Collector, Anantapur, who by an order dated 06.07.1998 allowed the appeal and set aside the order of the RDO and upheld the assignment in favour of the petitioners.

The petitioner herein filed a Caveat Petition before the first respondent on 31.08.1998 apprehending that the fourth respondent might file a further revision before the first respondent. Some time in November, it appears that the fourth respondent filed a revision before the Commissioner, the first respondent herein. By impugned order in SP.CLR's.Procs.No.DCW1/1342/98, dated 30.11.1998, the first respondent allowed the appeal and directed the Joint Collector, Anantapur to restore the land to the legal heirs of the original assignee. This Writ Petition is filed assailing the same.

A reading of the impugned order would show that the same suffers from two infirmities. First, though the petitioner has filed a Caveat Petition, no notice was served on the petitioner. It is now well settled that no revisional authority can exercise jurisdiction without proper notice and without affording adequate opportunity of being represented to the opposite party who would be adversely affected by exercise of revisional jurisdiction. Secondly, the order is one which suffers from total non-application of mind. The assignment originally made in favour of G.Chandrayudu was cancelled for non-compliance of the conditions of

patta/assignment in which event in law there is no requirement to restore the land to the legal heirs of original assignee. Such a course is contemplated under the provisions of the A.P.Assigned Lands (Prohibition of Transfers) Act, 1977 ('the Act' for brevity) when the transfer of assignment land is made in contravention of provisions of Section 3 (1) of the Act is resumed under Section 4 of the Act. In a case where the assignment is cancelled for non-compliance of the conditions of assignment or on the ground that assignment was obtained by applying fraud or misrepresentation, there is no requirement in law to assign the land to the legal heirs of the original assignee. Such a course would amount to putting premium of upon illegality ignoring the legitimate claims. The observation made by the first respondent that the RDO/Mandal Revenue Officer should have located legal heirs of the original assignee, if not residing in the village, before assigning to others, is a statement made in gross perverse exercise of revisional jurisdiction. The impugned order is wholly unsustainable.

In the result, the Writ Petition is allowed. The impugned order of the first respondent is set aside. The matter is remitted to the first respondent for fresh disposal in accordance with law. Needless to point out that the first respondent shall issue notice to the petitioners and the fourth respondent, and hear them, before passing any orders.

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(V.V.S.RAO, J)

21st July 2004

RRB

Copies To:

1. The Commissioner of Land Revenue, Government of Andhra Pradesh, Hyderabad.
2. The Joint Collector & Additional District Magistrate, Anantapur, Anantapur District.
3. The Revenue Divisional Officer, Penukonda, Anantapur District.

4. Two CCs to G.P. for Revenue, High Court Buildings (OUT).

5. Two CD copies.